1952.

File No. O. Sholapur Spg & Wg/52

Legal Department -

A **BRANCH** P.6.E

Subject:— Opinions under the Sholapur Spinning & Weaving Emergency Provisions Act, 1950.

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Asstt. Solr.

The Sholapur Spinning and Weaving Co.Ltd. by their letter dated 11th March 1952, asked for sanc-tion of the Government of Bombay for conversion of Co-operative Society's buildings at Sholapur into residential flats for supervisory staff and for spend-ing Rs. 22, 521/- for repairs thereto. The said request of the Mill was duly sanctioned and the said company had filed suits in ejectment against the tenants who declined to vacate. Mr. Shah the legal advisor of the company advised the company to withdraw the said suits and to file fresh suits on the same cause of action after obtain-ing specific sanction of the Government under sub-section (2) of section 5 of the Sholapur Spinning and Weaving Company Emergency Provisions Act(XXVIII of 1950) for cancellation of the agreements of tenancies and for filing civil suits against the tendnats for vacant possession of the portions of the buildings occupied by them. The said company has, therefore, asked the Government of Bombay to accord specific sanction as per advice of its legal advisor Mr. Shah. Sub-section (2) of section 5 of the Act referred to therein reads as follows:-

"(2) The Directors may, with the previous sanction of the Central Government, cancel or vary, either unconditi-onally or subject to such conditions as they think fit to impose any contract or agreement entered into between the company and any other person at any time before the issue of the notified order under section 3, if the directors are satisfied that such contract or agreement is detriment-al to the interest of the Company".

It is also to be observed that the Government of India has directed that all powers exercisable under the Act may be exercised by the Government of Bombay. The Development Department has, therefore, referred these papers to the Secretary, L.D. for advice.

Id/..... 11-8-52

R.L.A. We may advise that sanction may be granted as a matter of abundant caution.

Id./P.M.L. 12/8

U.R. to D.D. No. 13421 dt. 16-8-52.

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4 Copies.

Government-

(a) has granted a loan of-

(i) 10 lakhs to the Board of Directors repayable upto 28th February 1954; and

(ii) 9 lakhs to the Sholapur Spinning and Weaving Company repayable upto 28th January 1953; and

(b) has guaranteed-

(i) loans advanced by the Bank of Baroda to the Company to the extent of 75 lakhs against the stocks of the Company; and

(ii) the repayment of a credit amount of 30 lakhs advanced or to be advanced by the Bank to the Company against the block assets of the Company.

Government, under consolidated guarantee bond dated 15th May 1952, has also guaranteed repayment of the advance of Rs. 75 lakhs made by the Bank of Baroda to the Company against the stock of the Company and the repayment of 30 lakhs against the block assets has been secured by a guarantee bond dated 14th February 1951.

2 The questions for H.L.A.'s consideration are:-

(1) if the judgment of the Supreme Court in Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Company Ltd.(Appeal No. 48 of 1950) went against Government, whether Government's right to recover moneys advanced will be affected; whether the Bank of Baroda will be able to recover the loans advanced to the Mills and if not, whether Government will be held liable.

(2) whether the Government nominated Directors,

Government and the Government of India will be indemnified in regard to the various direct and indirect steps taken in regard to the management of the Mills; if not, whether any separate legislation is necessary. The A.L.A. is also requested to advise whether the Government of Bombay should take up the question of indemnity as well as recovery of loans etc. with the Government of India.

3 If the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950(XXVIII of 1950) is held by the Supreme Court to be ultra vires it is true that all the acts of the Directors done in pursuance of the provisions of such Act would be ultra vires the Company and therefore void ab initio. But it has been held that a corporation receiving money upon agreement which turns out to be ultra vires or illegal is not entitled to retain the money. Thus although the loans raised by the Directors appointed under the impugned Act may turn out to be invalidly raised and therefore illegal as a result of the Act being declared as ultra vires and invalid, it cannot be disputed that since the corporation has received the money under the loan agreements it will not be entitled to retain the money. The obligation to do justice rests upon all persons, natural and artificial. If one obtains the money of other without authority the law independently of express contract, will compel restitution or compensation (Ranklin v. Emigh (1910) 218 U.S. 27). The relief is granted not upon the illegal contract, nor according to its terms but on implied contract of the Corporation to return, or failing to do that, to make

compensation for property or money which it has no right to retain; to maintain such an action is not to affirm but to disaffirm the illegal contract. Central Transport Co. v. Pullman Palace Car Co. (1890) 139 U.S. 24 (cf, 43 Cal. 790 at p. 827). It would, therefore, appear that even if the Act is held as ultra vires, the company can be compelled to restore the money advanced to it by the Governme nt and the Bank of Baroda.

4 The question whether the Government nomina ted directors should be indemnified in regard to the various direct and indirect steps taken in regard to the management of the Mills and whether Government of India should be approached in that behlaf will have to be considered after the decision of the Supreme Court is known; legislation for indemnifying the directors can, if necessary, be promoted on the lines of Bom. III of 1946(See section 2, concluding portion).

The entire position may be reviewed after the Supreme Court judgment is pronounced when alone a definite opinion can be expressed.

Id./P.M.L. 6/10

Remembrancer of Legal Affairs.

U.R. to F.D. No. 1018/B-Conf1, dated the 7th October 1952.

SMR 12-6-56
4 Copies.